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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL JOSEPH RUFFNER,
Debtor,

Case No. 8:17-bk-14421-ES
Chapter Number: 7

**EVIDENTIARY OBJECTIONS IN
SUPPORT OF REPLY IN SUPPORT OF
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY UNDER 11 U.S.C. §
362**

Date: 02/01/18
Time: 10:00 a.m.
Ctrm: 5 A

**TO THE HONORABLE ERITHE A. SMITH, JUDGE OF THE UNITED STATES
BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

Movant TROJAN CAPITAL INVESTMENTS, LLC, (“Movant” or “Trojan”) files the following evidentiary objections in support of its Reply in support of its *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* [Docket No. 10] (the “Motion”).¹

¹ This Reply is being filed one day after the Court’s deadline of January 25, 2018 with the gracious agreement of Debtor’s counsel.

OBJECTIONS

THE DEBTOR'S EVIDENCE OF A LOAN PAYOFF IS INADMISSIBLE

Trojan is in possession of the original note from the Debtor's loan, and Trojan's affiliated entity, Trinity Financial Services, LLC, paid value to PNC Bank, N.A., National City Bank's successor, for the note. *See Supporting Declaration of Don A. Madden, III*, filed contemporaneously herewith. In contrast, the Debtor's proffered "evidence" that he paid off his loan the year after taking the loan out is inadmissible. Trojan objects to all of the Debtor's evidence.

A. The Debtor's Exhibit A

Exhibit A to the Debtor’s *Declaration of Debtor Michael Ruffner in Support of Debtor’s Opposition to Movant’s Motion for Relief from Automatic Stay* [Docket No. 24] is a wholly illegible image of a cashier’s check from Bank of America. Trojan objects to the Debtor’s Exhibit A under Federal Rule of Evidence 403, as the proffered document confuses the issues. The check lists no payee whatsoever, and the amount of the check is also completely illegible. Trojan also objects under FRE 1003—this document is inadmissible because of the poor quality of the digital copy.

B. The Debtor's Exhibit B

The Debtor's Exhibit B is unauthenticated hearsay, and therefore inadmissible under FRE 802. The Debtor claims that Exhibit B is a letter from National City Bank regarding the closure of his account. However, the letter appears to be typed in the Calibri font (which is the default in Microsoft Word), and does not use the bank's typical letterhead or other formatting. Attached as Exhibit A is a genuine letter from National City Bank regarding a home equity line of credit account, taken from the court filings in the United States District Court for the Western District of Tennessee in the case of *Raeth v. National City Bank*, 2:09-cv-02812-JPM-tmp, Docket No. 1. The difference between the *Raeth* letter and the Debtor's purported letter is striking—the fonts, block formatting, and other aspects of the letter are wholly incongruous. In particular, the Debtor's letter does not contain the bank's website address or an identifying barcode for the Debtor's account.

1 In addition to the fact that the letter is not concordant with other letters from National City
2 Bank, the letter contains typographical errors that would be unlikely to appear in a genuine letter
3 from the bank. In particular, the letter contains the line “We appreciate the opportunity to help
4 you mange your home asset” [sic]. “Mange,” rather than “manage.” It is highly unlikely that a
5 large regional bank such as National City Bank would have such a typo in a form letter it created
6 for mailing to thousands of customers. Accordingly, Trojan also objects to the Debtor’s Exhibit
7 B under FRE 403.

8 **C. The Debtor’s Exhibit C**

9 Lastly, the Debtor’s Exhibit C purports to be a Form 1098 substitute, again somehow
10 typed in Microsoft Word’s default font of Calibri, purporting to list an Ending Balance of \$0.
11 Notably, the form contains a “Property Address” section at the bottom that falls outside the
12 boundaries of the form itself! Further, the Debtor’s version of the form contains a number of
13 entries that are not listed on a real Form 1098,² such as “Real estate taxes paid,” “Principal
14 Reconciliation,” “Principal Applied,” “Ending Balance,” and “Late Charges Paid.” The Debtor’s
15 form even helpfully lists an “ending balance” of “0” for our purposes, though this field is notably
16 absent from the Official Form 1098. The Debtor’s version of Form 1098 thus goes considerably
17 beyond what an ordinary Form 1098 would do—merely report paid mortgage interest. Trojan
18 thus objects to the Debtor’s Exhibit C under FRE 403.

19 Assuming the Debtor’s Exhibit C is even a real substitute Form 1098, it does not serve as
20 evidence that the Debtor paid off his loan. Therefore, Trojan objects to the Debtor’s Exhibit C
21 under FRE 402. A tax form “‘does not itself operate to legally discharge a debtor’s liability,’ and
22 thus ‘does not, standing alone, raise a genuine issue of material fact regarding [the Debtor’s]
23 liability on the Note.’” *F.D.I.C. v. Cashion*, 720 F.3d 169, 177 (4th Cir. 2013) (quoting the trial
24 court below with approval). Tax reporting forms are “a creditor’s required means of satisfying a
25 reporting obligation to the IRS; it is not a means of accomplishing an actual discharge of debt, nor
26 is it required only where an actual discharge has already occurred.” *Id.* at 179. Thus, a tax form

28 ² The IRS’s Official Form 1098 is available at <https://www.irs.gov/pub/irs-pdf/f1098.pdf>. A copy of this form is
29 attached to this Reply as Exhibit B.

1 is not an admission by a creditor that a debt has been paid, and “does not raise a genuine issue of
2 material fact’ as to whether the debt had been cancelled.” *Id.* at 180.

3 In this case, the Debtor’s purported Form 1098 substitute, assuming it is a genuine form,
4 does not raise a genuine issue of material fact that the Debtor paid off his loan. Further, the
5 Debtor has failed to present a recorded lien release or any other documentation that show he
6 discharged his debt to Trojan.

7 **CONCLUSION**

8 For the foregoing reasons, Movant submits that the Debtor’s evidence should not be
9 admitted and the Motion should be granted.

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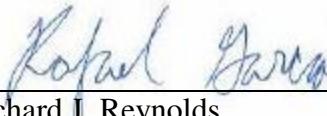
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Dated: January 26, 2018

BURKE, WILLIAMS & SORENSEN, LLP

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14 By: 

Richard J. Reynolds
Rafael R. Garcia-Salgado
Attorneys for Creditor
TROJAN CAPITAL INVESTMENTS,
LLC

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1851 East First Street, Suite 1550, Santa Ana, California 92705-4067

A true and correct copy of the foregoing document entitled *(specify)*:

**EVIDENTIARY OBJECTIONS IN SUPPORT OF REPLY IN SUPPORT OF
MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)*

01/26/18, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Brian C Andrews elizabeth@briancandrews.com, andrewslawgroupinc@gmail.com;r44711@notify.bestcase.com
- Thomas H Casey (TR) msilva@tomcaseylaw.com, thc@trustesolutions.net
- Rafael R Garcia-Salgado rgarcia@bwslaw.com, bantle@bwslaw.com, rjr-nef@bwslaw.com
- Richard J Reynolds rreynolds@bwslaw.com, psoeffner@bwslaw.com, tmims@bwslaw.com,rjr-nef@bwslaw.com;fcabezas@bwslaw.com
- Andrew A Smits , kimberly@smits-law.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- Gilbert R Yabes efcacab@aldridgeppte.com, GRY@ecf.inforuptcy.com;gyabes@aldridgeppte.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* **01/26/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Michael Joseph Ruffner
4829 Camino Costado
San Clemente, CA 92673

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 01/26/18, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe A. Smith

411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued
on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/26/18
Date

Bernadette C. Antle
Printed Name

Signature